



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C. 20460

FEB 13 2019

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

OFFICE OF
ENFORCEMENT AND
COMPLIANCE ASSURANCE

Mr. Mark Vergnano, President and CEO
The Chemours Company
Care of the Corporate Secretary
1007 Market Street
Wilmington, Delaware 19899

Re: Notice of Violation of the Toxic Substances Control Act

Dear Mr. Vergnano:

The purpose of this letter is to notify you that the U.S. Environmental Protection Agency (EPA) has determined that The Chemours Company (Chemours) is in violation of the Toxic Substances Control Act (TSCA), 15 U.S.C. § 2601 et seq., and its implementing regulations. Representatives of the EPA conducted inspections at Chemours' Fayetteville Works facility located near Fayetteville, North Carolina on June 28 and 29, 2017, and at the Washington Works facility near Parkersburg, West Virginia on October 17 and 18, 2017. The inspection reports provide a detailed description of the observations made during each inspection along with observations from the review of information Chemours provided to the inspectors. As detailed in this Notice of Violation (NOV), Chemours violated Section 5 of TSCA, 15 U.S.C. § 2604 and Section 8 of TSCA, 15 U.S.C. § 2607, and the regulations promulgated at 40 CFR Parts 720, 721, and 711, as indicated below.

Law Governing Violations

The violations described in this NOV concern the manufacture of new chemicals subject to TSCA. In creating TSCA, Congress found, in part, that "(1) human beings and the environment are being exposed each year to a large number of chemical substances and mixtures; (2) among the many chemical substances and mixtures which are constantly being developed and produced, there are some whose manufacture, processing, distribution in commerce, use, or disposal may present an unreasonable risk of injury to health or the environment . . ." TSCA § 2(a), 15 U.S.C. 2601(a). Congress' primary purpose in creating TSCA was "to assure that such innovation and commerce in such chemical substances and mixtures do not present an unreasonable risk of injury to health or the environment." TSCA § 2(b)(3), 15 U.S.C. § 2601(b)(3).

The EPA found that Chemours failed to submit a Pre-Manufacture Notice in violation of TSCA Section 5. Section 5 of TSCA requires anyone who plans to manufacture (including import) a new chemical substance for a non-exempt commercial purpose to provide the EPA with notice before initiating the activity. This notice is known as a PMN.

The EPA found that Chemours failed to comply with applicable Significant New Use Rules (SNUR) and failed to submit a required Significant New Use Notice (SNUN). The EPA can determine that a use of a chemical substance is a “significant new use.” EPA can issue SNURs to require notice to the EPA before chemical substances and mixtures are used in new ways that may create risks. Once the EPA determines that a use of a chemical substance is a significant new use, TSCA Section 5(a) requires persons to submit a SNUN to the EPA at least 90 days before they manufacture (including import) or process the chemical substance for that use. The SNUN notification obligates the EPA to assess risks that may be associated with the significant new use.

The EPA found that Chemours failed to comply with a TSCA Section 5(e) order. One outcome of the EPA’s review of a new chemical substance or review of a SNUN for a significant new use is the issuance of an order under Section 5(e) of TSCA. Most TSCA Section 5(e) orders are consent orders that are negotiated with the submitter of the notification. A Section 5(e) order typically contains some or all of the following requirements as conditions: testing for toxicity or environmental fate once a certain production volume or time period is reached; use of worker personal protective equipment; New Chemical Exposure Limits (NCELs) for worker protection; hazard communication language; distribution and use restrictions; and, restrictions on releases to water, air and/or land.

The EPA found that Chemours failed to comply with TSCA Section 8 and the Chemical Data Reporting (CDR) Rule. TSCA Section 8 gives the EPA the authority to require reporting and record-keeping by persons who manufacture, import, process, and/or distribute chemical substances in commerce. The CDR rule issued under TSCA requires manufacturers (including importers) to give the EPA information on the chemicals they manufacture domestically or import into the United States. The EPA uses the data, which provides important screening-level exposure related information, to help assess the potential human health and environmental effects of these chemicals and makes the non-confidential business information it receives available to the public.

The EPA found, as detailed in this NOV, that Chemours failed to comply with several requirements of TSCA. It is unlawful for any person to fail or refuse to comply with any requirement of TSCA or any rule promulgated, order issued, or consent agreement entered into under TSCA, including any requirement for submitting reports, notices or other information and maintaining records.

Violations

The EPA identified the following TSCA violations at the Fayetteville Works facility:

1. Failure to submit a SNUN for [CONFIDENTIAL BUSINESS INFORMATION (CBI) DELETED], a chemical subject to a SNUR restricting its annual production to 10,000 pounds. [40 CFR Part 721 for SNURs, specifically [CBI DELETED].]

2. Failure to submit a PMN for one chemical substance that was manufactured for a commercial purpose and not listed on the TSCA inventory. [40 CFR Part 720].
3. Failure to include three chemical substances [CBI DELETED] on the 2016 CDR [40 CFR Part 711].
4. Failure to report to two significant figures of accuracy on four chemical substances [CBI DELETED] included on the 2016 CDR. [40 CFR Part 711].
5. Failure to submit a SNUN for hexafluoropropylene oxide (HFPO), a chemical subject to a SNUR requiring HFPO to be used in an enclosed process in accordance with 40 CFR § 721.4160. HFPO is manufactured at the Fayetteville facility to be used as part of the manufacture of other perfluoroalkyl substances (PFAS). HFPO is a separate chemical with its own limitations for use under a TSCA Section 5 SNUR. On June 13, 2018, Chemours provided the EPA with HFPO process emissions estimates. The inspection report for the Fayetteville Works (Attachment A) describes the release of HFPO to the environment and the SNUR requirement for Chemours to use HFPO in an enclosed process.
6. Failure to notify [CBI DELETED], a customer, that HFPO was subject to a SNUR. Chemours distributed HFPO to [CBI DELETED].

The EPA identified the following TSCA violations at the Washington Works facility:

7. Failure to report to two significant figures of accuracy on two chemical substances [CBI DELETED] included on the 2016 CDR. [40 CFR Part 711].
8. Failure to properly control the effluent and emissions during the use of GenX as required by a 2009 TSCA Section 5(e) consent order (Consent Order). The Consent Order states that DuPont/Chemours “shall recover and capture (destroy) or recycle” GenX chemical substances “at an overall efficiency of 99% from all the effluent process streams and the air emissions (point source and fugitive).” [Consent Order, page 36 under the heading “Control of Effluent and Emissions”]. The inspection report for the Washington Works (Attachment B) describes the failure to meet the Consent Order requirement.

Enforcement

The EPA continues to investigate and review information concerning the compliance status of these and other Chemours facilities relating to TSCA. The violations articulated above are those that the EPA has determined, at this point, are sufficiently supported by evidence to warrant the violations identified in this NOV. The EPA may find additional TSCA violations as the investigation continues. The EPA has authority under TSCA to pursue enforcement actions for violations through the assessment of administrative penalties, injunctive relief and/or criminal actions. Section 17 of TSCA, 15 U.S.C. § 2616, authorizes the EPA to seek appropriate action in the United States district courts to restrain any person from taking any action prohibited by TSCA, including any rule or order under Section 5 of TSCA. Pursuant to Section 16(a) of TSCA, 15 U.S.C. § 2615(a), as adjusted by the Civil Monetary Penalty Inflation Adjustment Rule, 40 CFR Part 19, violations are subject to a civil penalty for each offense.

Requested Actions

This NOV notifies Chemours of the opportunity to provide additional information to the EPA with respect to these violations. To the extent that Chemours has information that would inform the EPA's TSCA compliance investigation, the EPA requests that Chemours submit such information in writing to Mr. Mark Garvey, of my staff, at the following mailing address within 14 days of the date Chemours is in receipt of this NOV. For any submission containing CBI, please contact Mr. Mark Garvey for instructions on proper submission.

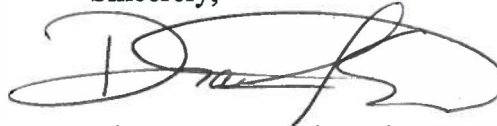
Mark Garvey, Attorney-Advisor
Waste and Chemical Enforcement Division
Office of Civil Enforcement
U.S. Environmental Protection Agency
1200 Pennsylvania Ave., N.W., Mail Code 2249A
Washington, D.C. 20460
Telephone: (202) 564-4168
E-mail: garvey.mark@epa.gov

The EPA also requests Chemours' immediate action to correct the violations identified in the NOV and come into compliance with TSCA. The EPA further requests that within 30 days from the date of this letter, Chemours submit to EPA an outline of the actions that Chemours has already undertaken and/or provide the time-frame for actions it will implement to come into compliance with TSCA.

The Agency previously requested information from Chemours pursuant to TSCA Section 11 documenting when Chemours first learned about the GenX-related contamination in and around the Fayetteville Works and Washington Works facilities, including GenX contamination in drinking water. This information has not yet been provided by Chemours. The EPA is requesting that such documentation or substantiation be included in Chemours' response. Submission of this information is significant to Chemours' compliance with substantial risk information required under TSCA Section 8(e).

If you have any questions regarding this TSCA NOV, please contact Mark Garvey at (202) 564-4168 or as indicated above.

Sincerely,

A handwritten signature in black ink, appearing to read 'Diana Saenz', with a stylized flourish at the end.

Diana Saenz, Acting Director
Waste and Chemical Enforcement Division
Office of Civil Enforcement
Office of Enforcement and Compliance Assurance
United States Environmental Protection Agency

Attachments:

Attachment A – Inspection Report for Fayetteville Facility
Attachment B – Inspection Report for Washington Works Facility

cc: Joel Gross, Counsel for Chemours

cc: Sheila Holman, North Carolina Department of Environmental Quality – *TSCA CBI sanitized version only*

cc: Jeremy Bandy, West Virginia Department of Environmental Protection – *TSCA CBI sanitized version only*